

FILED
BILLINGS DIV.

2008 NOV 3 AM 8 16
IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFFY, CLERK
FOR THE DISTRICT OF MONTANA
BY _____

BILLINGS DIVISION

DEPUTY CLERK

PAUL LANDE, JR., and Barbara J. Lande,

CV-08-02-BLG-RFC-CSO

Plaintiffs,

vs.

**FINDINGS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE**

PAUL A. LANDE SR., JEANNE R. LANDE,
and CHARLES F. CONNERS, Secretary of
Agriculture, United States of America, et
al.,

Defendants.

Plaintiffs Paul Lande, Jr., and Barbara J. Lande brought this action to quiet title to certain real property in Bighorn County, Montana.

On March 11, 2008, federal defendants Charles F. Connors, in his official capacity as Secretary of the United States Department of Agriculture, and Dirk Kempthorne, in his official capacity as Secretary of the United States Department of the Interior ("Federal Defendants"), moved for dismissal of all claims under Fed.R.Civ.P. 12(b). *See Court's Doc. No. 14.* On May 7, 2008, this Court issued Findings and Recommendations, recommending that the Federal Defendants' motion be granted. *See Court's Doc. No. 20.* On September 3, 2008, Chief Judge Cebull issued an order adopting the Findings and Recommendations and dismissing with prejudice all claims against the Federal Defendants. *See Court's Doc. No. 26.*

Subsequently, on September 10, 2008, this Court issued a show cause order stating:

The Federal Rules of Civil Procedure provide that a plaintiff must serve his or her complaint on a defendant within 120 days. Fed.R.Civ.P. 4(m). Plaintiffs filed their Second Amended Complaint on March 19, 2008. *See Court's Doc. No. 17*. The record does not reflect that the remaining defendants, excepting Paul A. Lande, Sr. and Jeanne R. Lande, have been served with any complaint in this action. Accordingly, the Court will order Plaintiffs to appear in writing and show cause why the Second Amended Complaint should not be dismissed as to the unserved defendants.

Additionally, though Paul A. Lande, Sr. and Jeanne R. Lande did not join the Federal defendants' motion to dismiss, the stated grounds for dismissal appear equally applicable to the claims to all defendants. Accordingly, the Court will also order Plaintiffs to show cause why their claims against Paul A. Lande, Sr. and Jeanne R. Lande, and any remaining defendants, should not be dismissed for the same reasons the Court dismissed the claims against the Federal Defendants.

Court's Doc. No. 27 at 2.

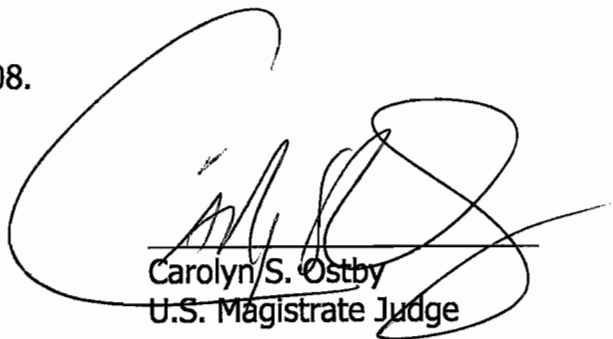
The Court's docket indicates that Plaintiffs have not appeared to show cause why their claims against the remaining defendants should not be dismissed. Thus, the Court must recommend, under Fed.R.Civ.P. 4(m), that Plaintiffs' Complaint be dismissed as to the remaining unserved defendants. Dismissal under Rule 4(m) is without prejudice. *See Ledbetter v. City of Topeka*, 318 F.3d 1183, 1187 n. 2 (10th Cir. 2003).

For the reasons stated in the Court's show cause order quoted above, the Court will recommend dismissal with prejudice as to Paul A. Lande, Sr. and Jeanne R. Lande, the remaining served defendants.

Based on the foregoing, IT IS RECOMMENDED that the Plaintiffs' Complaint against Paul A. Lande, Sr. And Jeanne R. Lande be DISMISSED with prejudice for the reasons stated in the Findings and Recommendations filed May 7, 2008 (*Court's Doc. No. 20*), and adopted by Chief Judge Cebull by Order dated September 3, 2008 (*Court's Doc. No. 26*).

Pursuant to Fed.R.Civ.P. 4(m), IT IS FURTHER RECOMMENDED that Plaintiff's claims against all unserved defendants be dismissed without prejudice and that the case be closed.

DATED this 3rd day of November, 2008.



Carolyn S. Ostby
U.S. Magistrate Judge